IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9157 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH PARBHUDASBHAI KANANI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT, Ld. GOVERNMENT PLEADER for Respondent Nos.1, 2 and 3.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 13th May, 2000 passed by respondent No.2 in respect of detenu - petitioner in exercise of his powers conferred on him under Sec.3(2) of the Gujarat

Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is "a bootlegger" within the meaning of section 2(b) of the Act and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on two prohibition cases punishable under the provisions of Bombay Prohibition Act, 1949. The detaining authority passed an order of detention on 13th May, 2000 and the petitioner was sent to Jail for detention on 14th May, 2000. That order is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents have filed affidavits-in-replies in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.H. R. Prajapati, learned advocate for the petitioner has argued that while passing an order of detention, the detaining authority has considered alternative less drastic remedy. As per the papers of grounds of detention, the detaining authority has considered alternative less drastic remedy under the provision of section 57(C) of the Bombay Police Act, 1951. The detenu is required to have been convicted in atleast three cases within a period of three years for resorting to that remedy. Herein this case, the detaining authority has not been convicted in any case. Mr.H. R. Prajapati, learned advocate for the petitioner has by citing an authority of JAYANTI NENUMEL RAMNANI v. COMMISSIONER OF POLICE, RAJKOT & ORS, reported in 2000 (2) GLH 166, also argued that less drastic remedy which was not legally available for passing an order of detention has been considered by detaining authority. Looking to the fact that two cases are pending for investigation against detenu, it is a clear cut case of non-application of mind by passing an order of detention. In view of the discussion made hereinabove, the order of detention is vitiated in absence of non-application of mind. Therefore, the order of detention is required to be quashed and set aside.

6. In view of what is stated hereinabove, this writ

petition is allowed. The impugned order of detention dated 13th May, 2000 passed by respondent No.2 in respect of detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta, J.)

(vrpanchal)